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Globalization and interdependence: international migration and development

Note verbale dated 31 August 2006 from the Permanent Mission of Argentina to the United Nations addressed to the Secretariat

The Permanent Mission of Argentina to the United Nations presents its compliments to the Secretary-General and has the honour to transmit herewith the document entitled "A paradigm shift: addressing migration from a human rights perspective", which was prepared by the Argentine Government as a contribution to the High-level Dialogue on International Migration and Development to be held during the sixty-first session of the General Assembly in September (see annex).

The Permanent Mission of Argentina to the United Nations should be grateful if the present note verbale and its annex were circulated as a document of the General Assembly.

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Annex to the note verbale dated 31 August 2006 from the Permanent Mission of Argentina to the United Nations addressed to the Secretariat

A paradigm shift: addressing migration from a human rights perspective

I. The Argentine Republic believes that, in order to respond to the complex nature of global migratory flows in the twenty-first century, there needs to be a paradigm shift in the way in which international migration is addressed. In other words, we must shift from a security and border control approach, based exclusively on the concept of nation state, to a comprehensive human rights perspective, where the migrant is at the heart of government migration policy.

Migration is a natural phenomenon that is as old as mankind. However, even though we live in a highly interdependent world, where capital moves freely, the right to migrate is, paradoxically, being discussed now more than ever.

Countries that until only a few years ago generated major migratory flows have become receiving countries. Nations that traditionally received immigrants are now seeing their nationals emigrate. States that based their development on foreign labour are now seeing their nationals emigrate. States that based their development on foreign labour now consider it to be undesirable.

The search for a better life should not be criticized, much less criminalized. Of course, it is a matter of concern that the international community as a whole has been unable to find solutions to the issue. As States, we must address the issue by seeking mechanisms for cooperation and assuming shared responsibility. It is time to convert expressions of intent into concrete action.

There are no one-size-fits-all solutions or absolute truths where migration is concerned. Each region and each country present their own unique characteristics. The only element common to the whole process of migration is the human being.

Traditionally, migration has been addressed in general international law as a residual topic in the chapter on foreign nationals, through the analysis of certain general principles of the Law of Nations. In general terms, it could be said that international law regulated the activities of foreign nationals in two main thematic areas: access to the territory of a State and freedom of movement therein, and the economic, professional and employment-related activities that they may engage in.

However, given the complex nature of migration in today's world and the challenges that people face when moving to, and settling in, their country of destination, it is necessary and fitting that discussions about international migration should include a social and human perspective.

We believe that legality is the foundation of any democratic society and a key requirement for foreign nationals to fully integrate into their host society. For that reason, it is essential that we, the world's Governments, find mechanisms for easy access to legal migration that enable us to identify and register those people in our territories, while frustrating the dealings of unscrupulous traffickers who benefit financially from restrictive migration policies.

Against this backdrop, it should be recalled that both the Universal Declaration of Human Rights and the main international human rights treaties — the majority of which enjoy near universal ratification — refer to the principle of equality in dignity and rights, thereby placing an obligation on States to respect the rights enshrined in those instruments without distinction of any kind, in particular race, religion or national origin. In addition, a number of these instruments establish that all people have the right to move freely both inside and outside their country and to freely choose the place where they wish to live and work.

As a result of the above, the traditional framework within which international law addressed issues relating to foreign nationals has grown in recent years and now encompasses the perspective of international human rights law.

Lately, migration has therefore been discussed from a human rights perspective in many contexts, both at the regional and the international level.

II. At the international level, for example, we could mention the various resolutions adopted by the Commission on Human Rights to protect the human rights of migrants.

It is important to mention here that, at the first session of the new Human Rights Council, held in June 2006, the Group of Latin American and Caribbean States prepared a joint statement on "International Migration and Human Rights", in order to establish the regional position on the issue in preparation for this High-level Dialogue.

It should also be pointed out that, at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa, in September 2001, States recognized that migrants, and above all women, are particularly vulnerable to racism, racial discrimination, xenophobia and related intolerance. Thus, the Programme of Action of the World Conference recommended that States should implement measures aimed at promoting the equal access of migrants to health, education and basic services, in cooperation with United Nations agencies, regional organizations and international financial organizations.

It is also important to mention the entry into force, in July 2003, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which incorporates key provisions of international human rights treaties. The Secretary-General of the United Nations has called on those Member States that have not yet done so to ratify or accede to the Convention as soon as possible, in order to ensure the full and effective protection of the human rights of migrants.

Lastly, it should be pointed out that the report of the Secretary-General on international migration and development (A/60/871), of 18 May 2006, states as follows: "For the full benefits of international migration to be realized, the rights of migrants must be respected. States have the obligation to protect the fundamental rights of all persons in their territory and they must take effective action to protect migrants against all forms of human rights violations and abuse. They must also combat all forms of discrimination, xenophobia, ethnocentrism and racism" (para. 77).

III. At the inter-American level, we should recall Advisory Opinion OC-18/03, in which the Inter-American Court of Human Rights addresses the rights of migrants,

in general, and of migrant workers in particular. The Court's opinion begins by recognizing the fundamental nature of the principle of equality and non-discrimination as a basic principle of human rights, and of the fundamental obligations of States based on their primary obligation to respect and guarantee human rights. The Court then applies the principle of equality and non-discrimination to migrants, in order to address the rights of undocumented migrant workers and establishes, inter alia, that "the migratory status of a person cannot constitute a justification to deprive him of the enjoyment and exercise of human rights, including those of a labour-related nature".

In the same vein, in the Declaration of the fourth Summit of the Americas, held in Mar del Plata, Argentina, in November 2005, under the theme "Creating Jobs to Fight Poverty and Strengthen Democratic Governance", the Heads of State and Government of the democratic countries of the Americas reaffirmed that "all migrants, regardless of their immigration status, should be accorded the full protection of human rights and the full observance of labour laws applicable to them, including the principles and labour rights embodied in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work (1998)" (para. 26).

We should also mention the establishment, in January 2004, of a working group to prepare an "Inter-American programme for the promotion and protection of the human rights of migrants, including migrant workers and their families", in the context of the Committee on Juridical and Political Affairs of the Permanent Council of the Organization of American States (OAS). The Group was chaired by Argentina. The aforementioned programme seeks to integrate the human rights considerations of migrants and their families into the work of the organs, agencies and entities of OAS, and into that of member States and civil society. The programme also points out that the power of States to regulate foreign nationals' entry into, and stay in, their territories and to determine the status of migrants "must be executed and consistent with applicable international human rights [...] law".

IV. On a different subject, we should also mention the relationship that exists at the international level between the treatment of issues relating to migration and international security, particularly in light of the current political context. This is why Argentina has stated in various forums that it is essential to address these issues from a human rights perspective, in order to ensure that measures adopted in the interest of international security do not impact negatively on the effective exercise of fundamental human rights.

As is clear from the above, there has been a gradual paradigm shift, at both the international and regional levels, and migration is now being addressed from the perspective of human rights and non-discrimination.

V. The Argentine Republic has made every effort to ensure that this paradigm shift informs its migration policy and, consequently, the provisions of its new National Migration Act, which entered into force in January 2004.

This new Act, the product of collaboration among various government and non-governmental sectors, reflects our country's commitment to guaranteeing full respect for the human rights of migrants and their families and, at the same time, establishing mechanisms to facilitate the regularization of their status, on the

understanding that such procedures are essential to achieving the full integration of foreigners in the host society.

By way of example, certain articles of the Act are quoted below:

Article 2. Human rights and international commitments relating to migrants. "The purposes of the present Act are (a) [...] to fulfil the Republic's international commitments with regard to the human rights, integration and mobility of migrants ... (f) To consider all requests to enter the Argentine Republic on the basis of non-discriminatory criteria and procedures within the context of the rights and guarantees established by the National Constitution, international treaties, existing bilateral agreements and domestic laws ... (g) To promote and disseminate the obligations, rights and guarantees of migrants, in accordance with the provisions of the National Constitution, international commitments and domestic laws, while living up to the nation's traditional humanitarian and open attitude towards migrants and their families ..."

Article 4. Right to migration. "The right to migration is a fundamental and inalienable human right which is guaranteed by the Argentine Republic on the basis of the principles of equality and universality."

Article 5. Equal treatment. "The State shall ensure the conditions that guarantee effective equality of treatment so that foreigners may enjoy their rights and fulfil their obligations ...."

Article 6. "The State, in all its jurisdictions, shall guarantee migrants and their families equal access, under the same conditions of protection, to the rights enjoyed by nationals, in particular as regards social services, public goods, health, education, justice, work, employment and social security." Article 13. "For the purposes of the present Act, discriminatory shall mean any act or omission determined by a person's ethnicity, religion, nationality, ideology, political opinion, trade union affiliation, gender, economic position or physical traits, which arbitrarily prevents, obstructs or restricts the full exercise of rights and guarantees on an equal footing."

Article 7. Right to education. "In no case shall a foreigner's irregular migrant status prevent him from being accepted as a student to an educational establishment, whether public or private, national, provincial or municipal, or at the primary, secondary, tertiary or university level. The administrations of educational establishments must provide guidance and advice on the procedures necessary to resolve irregularities in migrant status."

Article 8. Right to health. "The right of foreigners to health, social welfare or to health care cannot be denied or restricted, irrespective of their migrant status ...."

Article 9. Right to information. "Migrants and their families are entitled to receive information from the State regarding: (a) their rights and duties under existing legislation; (b) the requirements for their entry, stay and departure."

Article 14. Promotion of integration. "The State, in all its jurisdictions, whether national, provincial or municipal, shall encourage initiatives to integrate foreigners into their community of residence ..."

Court intervention in expulsion processes: Title V, Chapter I.

Detention of foreigners in expulsion procedures carried out exclusively by the courts: Title V, Chapter II.

The penalty for the crime of illegal trafficking in persons is increased where the life, health or integrity of the migrant has been jeopardized, or for an offence involving a minor. Chapter VI. For the first time, trafficking in migrants is criminalized in the relevant Argentine legislation. It is punishable by 1 to 6 years' imprisonment and may be extended to 20 years if there are aggravating circumstances.

The paradigm shift in the Argentine Republic has led to the establishment of a new strategic national vision. Argentina now understands that respect for the human rights of migrants and their families is key to fostering their full integration, which, in turn, contributes to the country's economic, political and social development.

Under the migrant policy applied by the Argentine Government from late 2003 to August of this year, the status of slightly more than 400,000 migrants in Argentine territory has been regularized.

The policy, based on awareness of the national, regional and international reality and drawing on previous experience, dissociates itself from prejudicial and biased preconceived notions.

Such preconceptions surround unemployed foreign workers. Between 1992 and 2003, 156,000 immigrants were legalized in Argentina. In the third quarter of 2003, the unemployment rate in Argentina stood at 16.3 per cent. With the legalization of 400,000 immigrants over the past three years, that unemployment rate has decreased by 6 points. These figures constitute clear-cut proof that some of the classic preconceived notions about migrants are relative and unsubstantiated.

Security is another element that clouds objectivity. While recognizing that the exercise of State sovereignty involves control of national borders and the power to decide on whom to admit into the national territory, Argentina believes that such powers must be exercised within the framework of due process. We are also of the view that domestic security is better served by immigrants who are legalized in our territory and allowed to carry documents rather than marginalized and anonymous, leaving them vulnerable to unscrupulous employers and reprehensible traffickers. In this connection, it should be pointed out that while legalization makes the immigrant's presence transparent in the national territory, it does not grant any type of impunity if a crime is committed. Any legal or illegal immigrant who commits a crime must stand trial and is subject to expulsion if the law so provides.

The Common Market of the Southern Cone (MERCOSUR) affects the migrant reality of the Argentine Republic. MERCOSUR, its member States, including Argentina, Brazil, Paraguay, Uruguay and Venezuela and its associated States, including Bolivia, Chile, Colombia, Ecuador and Peru, form the basis for the migrant documentary legalization programme currently being implemented in Argentina, known to Argentines as the "Patria Grande Programme".

This Programme's human and social perspective benefits all foreigners who are nationals of the States members and associated States of MERCOSUR, with the applicant's nationality being the criterion for regularization.

Thanks to this Programme, between 17 April 2006, the date of its entry into force, and 7 August, the date of the last statistical entry prior to the elaboration of this document, 227,339 migrants became regularized in Argentina.

In view of Argentina's changing migrant population, the Programme is quantitatively significant. While the National Constitution historically authorized European and selective immigration only, most migrants now come from South American countries, particularly neighbouring countries.

The Patria Grande Programme is not about amnesty; it is a national policy and applies to nationals of States members and associated States of MERCOSUR who are in Argentina, and to those who may enter the country in the future.

In order to benefit from the Programme, the applicant need only prove his nationality and the absence of any criminal record. In turn, he is given temporary residence for a two-year period, at the end of which he may obtain permanent residence.

Civil society participation has been crucial to implementing the Patria Grande Programme. Municipalities and social organizations acting as reception facilities are a basic pillar of the Programme. This interaction has drawn the national Government and the migrant closer. Today, the National Directorate of Migration is working with 98 data collection centres that have direct contact with migrants, receive their requests and forward them online to the appropriate agency.

VI. Migration, integration and regional development. For Argentina, the Patria Grande Programme means, inter alia, taking "a qualitative leap" in its whole approach to the issue of migration. It means no longer regarding migration as a "threat" or a "phenomenon" and beginning to associate it with integration, in this case, regional integration. It is our hope that that "Patria Grande" will be construed as:

- A Government policy that fulfils the commitments the country assumed with regard to the human rights, integration and mobility of migrants;
- A national documentary legalization programme for migrants, aimed at implementing measures to include and integrate the migrant population by facilitating their attainment of residence;
- A policy of solidarity with respect to regional integration benefiting nationals of the States members and associated States of MERCOSUR (Brazil, Bolivia, Colombia, Chile, Ecuador, Paraguay, Peru, Uruguay and Venezuela);
- A new settlement policy based on proof of nationality of one of the countries in the region and whose guiding principle is good faith.

As indicated in section I, analysing the various aspects of the question of migration is a fairly complex undertaking.

Such an analysis might have to be done from different perspectives, depending on the areas affected by the movement of persons. At the economic level, migration has microeconomic and macroeconomic implications; at the political level, it could involve looking at state policies on migration or the exercise of political rights by migrant populations; at the socio-cultural level, population displacements could have an impact on the ethnic and religious identity of peoples and groups. Changes in demographic volume, structure, composition and dynamics are both the point of departure and end result of immigration and emigration.

In the hope that none of these aspects will be overlooked, Argentina has decided to take a people-centred approach in its public policies on migration and to promote migration as a "qualitative leap" in achieving integration based on solidarity.

The success of these integration initiatives depends, of course, on a wide variety of factors. The most inescapable is a serious commitment to integration and regional cooperation. The migration policy contemplated in the new Argentina Migration Act would thus fulfil the commitments Argentina has undertaken with regard to the human rights, integration and mobility of migrants, and, at the same time, implement broad and inclusive migrant regularization programmes.

Integration also means respecting the cultural and ethnic diversity of the various countries concerned, in terms of both the human and social rights of migrants and their families, irrespective of their immigration status.

It should be noted that Argentina also guarantees the right to health, social welfare and health assistance to all foreigners in need of such services, irrespective of their immigration status. The same holds true for the right to education at all levels in both public and private institutions. Under Argentine law, in no case can a foreigner's irregular immigrant status prevent him from being accepted as a student in an educational establishment. Lastly, the integration policy must take into account the social, political and cultural repercussions of the integrating process itself.

To this end, we are working with the MERCOSUR countries and associated States and with the South American Community of Nations to establish more equitable and inclusive democracies, open up new channels of regional cooperation and ensure that all citizens of the region are made to feel they are participants in this process of integrating peoples.

Argentina hopes that this migration policy will be yet another instrument of the regional integration policy in progress. To this end, we will continue to strive for, in the words of the President of the Republic, Dr. Néstor Kirchner, "equality of responsibilities, equality of rights, equality of opportunities and a Patria Grande that will welcome all members of MERCOSUR and the countries of South America, and, of course, nationals of other countries in the world".

VII. Argentina will contribute to the High-level Dialogue and to the forthcoming Ibero-American Summit, to be held in November 2006 in Uruguay, by presenting its legislation on migration and the Patria Grande Programme.